

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	File No: EB-10-TP-0108
Thomas L. Morey	)	
	)	NAL/Acct. No.: 201132700006
St. Petersburg, Florida	)	
	)	FRN: 0020835732
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

Adopted: May 4, 2011

Released: May 5, 2011

By the District Director, Tampa Office, South Central Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we find that Thomas L. Morey ("Mr. Morey"), apparently willfully and repeatedly violated section 301 of the Communications Act of 1934, as amended ("Act"),<sup>1</sup> by operating an unlicensed radio transmitter on the frequency 88.3 MHz in St. Petersburg, Florida. We conclude that Mr. Morey is apparently liable for a monetary forfeiture in the amount of ten thousand dollars (\$10,000).

**II. BACKGROUND**

2. On August 13, 18, and 25, 2010, agents from the Enforcement Bureau's Tampa Office ("Tampa Office") used direction-finding techniques to locate the source of unidentified broadcast transmissions on the frequency 88.3 MHz to a residence in St. Petersburg, Florida, which Mr. Morey later admitted was his.<sup>2</sup> The agents took field strength measurements and determined that the signals being broadcast exceeded the limits for operation under Part 15 of the Commission's rules ("Rules") and therefore required a license.<sup>3</sup> A review of Commission records showed no authorization issued to Mr. Morey, or for any operation of an FM broadcast station on this frequency, at or near this address. On August 18, 2010, the agents heard a male voice on the air identify himself on 88.3 MHz as Disc Jockey ("DJ") "Thomas."

3. On August 31, 2010, agents from the Tampa Office inspected the unlicensed radio station located in the garage of Mr. Morey's residence in St. Petersburg, Florida and interviewed Mr. Morey. Mr. Morey admitted that he planned and constructed the station, operated it on the frequency 88.3 MHz, and DJ'd under the name "Thomas." Mr. Morey further said that he started his operation from the garage about 2 to 3 weeks prior to August 31, 2010.

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<sup>1</sup> 47 U.S.C. § 301.

<sup>2</sup> The agents observed an antenna mounted to a pole at his residence.

<sup>3</sup> Part 15 of the Rules sets out the conditions and technical requirements under which certain radio transmission devices may be used without a license. In relevant part, section 15.239 of the Rules provides that non-licensed broadcasting in the 88-108 MHz band is permitted only if the field strength of the transmission does not exceed 250 µV/m at three meters. 47 C.F.R. § 15.239.

### III. DISCUSSION

4. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>4</sup> The term “willful” as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.<sup>5</sup> The term “repeated” means the commission or omission of such act more than once or for more than one day.<sup>6</sup>

5. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license.<sup>7</sup> On August 13, 18, and 25, 2010, agents from the Tampa Office determined that an unlicensed radio station was operating on the frequency 88.3 MHz from a garage behind Mr. Morey’s residence in St. Petersburg, Florida. As discussed above, during the Commission’s inspection on August 31, 2010, Mr. Morey also admitted to operating the unlicensed radio station on the frequency 88.3 MHz from his garage for about two to three weeks prior to the date of the inspection. Because Mr. Morey consciously operated the station, we find the apparent violation willful. Because the operation occurred on more than one day, the apparent violation was repeated. Based on the evidence before us, we find Mr. Morey apparently willfully and repeatedly violated section 301 of the Act by operating radio transmission apparatus without a license on the frequency 88.3 MHz in St. Petersburg, Florida.

6. Pursuant to the Commission’s *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for operation without an instrument of authorization is \$10,000.<sup>8</sup> In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> Applying the *Forfeiture Policy Statement*, section 1.80 of the Rules, and the statutory factors to the instant case, we conclude that Mr. Morey is apparently liable for a forfeiture in the amount of \$10,000.

### IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.204, 0.311, 0.314 and 1.80 of the Rules, Thomas L. Morey

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<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387 (1991), *recond. denied*, 7 FCC Rcd 3454 (1992).

<sup>6</sup> Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

<sup>7</sup> 47 U.S.C. § 301.

<sup>8</sup> *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (“*Forfeiture Policy Statement*”), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for violations of section 301 of the Act.<sup>10</sup>

8. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Thomas L. Morey **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture must be made by credit card, check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the Account Number and the FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. BOX 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank Federal Reserve Bank of New York, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer—Financial Operations, 445 12<sup>th</sup> Street, S.W., Room 1-A625, Washington D.C. 20554. If you have questions, please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov). Mr. Morey shall also send electronic notification on the date said payment is made to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

10. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.80(f)(3) and 1.16 of the Rules. The written statement, if any, should be mailed to Federal Communications Commission, Enforcement Bureau, South Central Region, Tampa Office, 4010 W. Boy Scout Blvd., Suite 425, Tampa, Florida 33607, along with the NAL/Acct. No. referenced in the caption. The written statement shall also be emailed to [SCR-Response@fcc.gov](mailto:SCR-Response@fcc.gov).

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

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<sup>10</sup> 47 U.S.C. § 301, 503(b), 47 C.F.R. §§ 0.111, 0.204, 0.311, 0.314, 1.80.

12. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by both Certified Mail, Return Receipt Requested, and regular mail, to Thomas L. Morey at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Ralph Barlow  
District Director,  
Tampa Office  
Southeast Region  
Enforcement Bureau